

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL LAMAR RHYMES,

Petitioner,

vs.

JACK PALMER, *et al.*,

Respondents.

3:07-cv-00302-RCJ-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner. On October 20, 2010, an order of dismissal was filed and judgment was entered. (Docket #22 and #23). The basis for the dismissal was mail returned to the Court and petitioner's apparent failure to keep the Court apprised of his current address pursuant to Rule LSR 2-2 of the Local Rules of Special Proceedings and Appeals.

Following the filing of the dismissal order and judgment, respondents filed a notice informing the Court that petitioner is housed at Lovelock Correctional Center. (Docket #24). Respondents pointed out that the returned mail (Docket #20) sent by the Clerk of Court, was mailed to P.O. Box 359, Lovelock, Nevada. (Docket #19, Docket #20). However, Lovelock Correctional Center does not have a post office box, and the correct mailing address is 1200 Prison Road,

1 Lovelock, Nevada. On this same basis, petitioner has filed a motion for reconsideration/motion for
2 amendment of judgment. (Docket #27).

3 Rule 59(e) of the Federal Rules of Civil Procedure provides that any "motion to alter
4 or amend a judgment shall be filed no later than 10 days after entry of the judgment." Furthermore, a
5 motion under Fed. R. Civ. P. 59(e) "should not be granted, absent highly unusual circumstances,
6 unless the district court is presented with newly discovered evidence, committed clear error, or if
7 there is an intervening change in the controlling law." *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir.
8 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999). In the instant action,
9 due to a clerical error in the Clerk of Court's mailing of correspondence to the wrong address, the
10 dismissal order and judgment must be vacated.

11 **IT IS THEREFORE ORDERED** that petitioner's motion for reconsideration
12 (Docket #27) is **GRANTED**.

13 **IT IS FURTHER ORDERED** that the dismissal order and judgment, filed October
14 20, 2010, (Docket #22 and #23) are **VACATED**.

15 **IT IS FURTHER ORDERED** that the Court's order on the merits of the petition
16 will be issued in due course.

17 DATED this 29th day of November, 2010.

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19 UNITED STATES DISTRICT JUDGE
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